

South Dakota Department of Human Services

Policy Title:	Client/Patient Privacy Rights		
Policy Number:	DHS-100-02	Version:	1.0
Approved By:	Betty Oldenkamp, DHS Secretary		
Effective Date:	April 14, 2003		

Purpose:

The intent of this policy is to establish the privacy rights that DHS clients/patients have regarding the use and disclosure of their protected health information or PHI that is held by DHS, and to describe the process for filing a complaint should the client/patient feel those rights have been violated.

This document contains guidance for developing procedures to implement this policy.

Policy:

1. General

- a. DHS clients/patients have the right to, and DHS may not deny, the following:
 - i. Access to their own PHI, consistent with certain limitations;
 - ii. Receive an accounting of disclosures DHS has made of their PHI for up to six years prior to the date of requesting such accounting. PHI may not be available prior to the effective date of this policy (April 14, 2003) and certain limitations do apply as outlined in section 6 of this policy; and
 - iii. Submit complaints with DHS or the Secretary of the United States Department of Health and Human Services (DHHS), Office of Civil Rights if they believe or suspect that PHI about them has been improperly used or disclosed, or if they have concerns about the privacy policies of DHS.
- b. Clients/patients may ask DHS to take specific actions regarding the use and disclosure of their PHI and DHS may either approve or deny the request. Specifically, clients/patients have the right to request:
 - i. That DHS restrict uses and disclosures of their PHI while carrying out treatment, payment, or health care operations;

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- ii. To receive PHI from DHS by alternative means, such as mail, e-mail, fax or telephone, or at alternative locations; and
- iii. That DHS make amendments to the PHI or record created by DHS about the client/patient maintained in a designated record set.
 - A. Designated record set is defined as:
 - I. A group of records maintained by or for DHS that is the medical records and billing records about the client/patient, the enrollment, payment, claims adjudication, and case or medical management record system maintained by or for DHS, or used in whole or in part by DHS to make decisions about the client/patient.
- c. Relationship to Notice of Privacy Practices.
 - i. DHS will use the “DHS Notice of Privacy Practices,” to inform clients/patients about how DHS may use and/or disclose their PHI. The Notice of Privacy Practices also describes the actions a client/patient may take, or request DHS to take, with regard to the use and/or disclosure of their PHI.
 - A. The policies related to the “Notice of Privacy Practices” and the distribution of the Notice is addressed in **DHS Policy DHS-100-01, “General Privacy”**.
 - ii. Nothing in this policy, or the policy related to the “DHS Notice of Privacy Practices,” shall prevent DHS from changing its policies or the Notice at any time, provided that the changes in the policies or Notice comply with Federal and State law.
- d. Decision-making authority within DHS.
 - i. Prior to any decision, based on a client/patient’s request for DHS to make amendments to their PHI or health or medical record created by DHS, a DHS staff person, designated by the program administrator/director shall review the request and any related documentation.
 - ii. Prior to any decision to amend any other PHI created by DHS that is not a health or medical record, a DHS staff person, designated by the program administrator/director shall review the request and any related documentation.

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- iii. Prior to any decision to deny a client/patient access to their PHI, a licensed health care professional, designated by the program administrator/director, shall review the request and any related documentation. If access is denied by DHS, and the client/patient request the denial be reviewed, such review shall be done by a licensed health care professional, designated by the program administrator/director, who did not participate in the original decision to deny.
- iv. Decisions related to any other requests made to DHS under this policy shall be handled in a manner consistent with Federal and State laws and regulations and/or DHS policies and procedures applicable to the program, service or activity.

2. **Rights of Clients/Patients to request restrictions of Uses and Disclosures of their PHI**

- a. Clients/patients have the right to request restrictions on the use and/or disclosure of their PHI.
- b. DHS applies confidentiality laws applicable to specific programs or services to protect the privacy of client/patient PHI. Even if those laws would permit DHS to make a use or disclosure of PHI, a DHS client/patient has the right to request a restriction on a use or disclosure of that PHI.
- c. All requests for restrictions will be made by having the client/patient complete a **DHS 2095**, "Restriction of Use and Disclosures Request Form".
- d. DHS is not required to agree to a restriction and may deny the request or may agree to a restriction more limited than what the client/patient requested. (See 2. **Requesting Restrictions of Uses and Disclosures** in the Guidance for Procedure Development section).

Exception: Certain programs can only use PHI that is authorized by the client/patient, such as alcohol and drug programs. For those program participants, DHS will honor their requests for restriction by making sure that the authorization clearly identifies the authorized recipients of the PHI.

3. **Rights of Clients/Patients to request and to receive PHI from DHS by alternative means or at alternative locations**

- a. DHS must accommodate reasonable requests by clients/patients to receive communications by alternative means or at alternative

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locations. (See 3. **Requesting Alternative Means or Locations** in the Guidance for Procedure Development section).

- b. In some cases, sensitive health information or health services must be handled with strict confidentiality under State law. For example, PHI about certain sexually transmitted diseases. DHS will comply with the more restrictive requirements.

4. **Rights of Clients/Patients to access their PHI**

- a. Clients/patients have the right to access, inspect, and obtain a copy of their own PHI in DHS files or records, including PHI that is kept electronically, consistent with Federal and State law.
- b. All requests for access will be made by having the client/patient complete a **DHS 2093**, “Access to Records Request Form”.
- c. Clients/patients may request access to their own PHI that is kept by DHS by using a personal identifier (such as the client/patient’s name or DHS case number).
 - i. If DHS maintains PHI about the client/patient in a record that includes PHI about other people, the client/patient is only authorized to see PHI about themselves, except as provided below:
 - A. If a person identified in the file is a minor child of the client/patient, and the client/patient is authorized under Federal or State law to have access to the minor’s PHI or to act on behalf of the minor for making decisions about the minor’s care, the client/patient may also obtain PHI about the minor.
 - B. If the person requesting PHI is recognized under South Dakota law as a guardian or legal custodian of the client/patient and is authorized by South Dakota law to have access to the client/patient’s PHI or to act on behalf of the client/patient for making decisions about the client/patient’s services or care, DHS may release PHI to the requestor.
 - C. Under these special circumstances: the state designated protection and advocacy agency for the rights of individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the rights of individuals with mental illness under the Protection and

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Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.), may have access to records, as provided in law.

- d. DHS may deny clients/patients access to their own health PHI if Federal law prohibits the disclosure or DHS believes in good faith that its disclosure could cause harm to the client/patient or to another person. (See 4. **Requesting Access to PHI** in the Guidance for Procedure Development section).

5. Rights of Clients/Patients to request amendments to their PHI

- a. Clients/patients have the right to request that DHS amend their own PHI in DHS files, and created by DHS.
- b. All requests for amendments will be made by having the client/patient complete a **DHS 2094**, “Amendment of Health Record Request Form”.
- c. DHS is not obligated to agree to an amendment and may deny the requests or limit its agreement to amend. (See 5. **Requesting Amendments of PHI** in the Guidance for Procedure Development section).

6. Rights of Clients/Patients to an accounting of disclosures of PHI

- a. Clients/patients have the right to receive an accounting of disclosures of their own PHI that DHS has made for any period of time, not to exceed six years, preceding the date of requesting the accounting.
- b. The accounting will only include PHI NOT previously authorized by the client/patient for use or disclosure, and will not include PHI collected, used or disclosed for treatment, payment or health care operations for that client/patient. (See 6. **Requesting an Accounting of Disclosures** in the Guidance for Procedure Development section).
- c. All requests for accountings will be made by having the client/patient complete a **DHS 2096**, “Accounting of Disclosures Request Form”.
- d. This right does not apply to disclosures made prior to the effective date of this policy, which is April 14, 2003.

7. Rights of Clients/Patients to file complaints regarding disclosure of PHI

- a. Clients/patients have a right to submit a complaint if they believe that DHS has improperly used or disclosed their PHI, or if they have

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concerns about the privacy policies of DHS or concerns about DHS compliance with such policies. (See 7. **Filing a Complaint** in the Guidance for Procedure Development section).

Guidance for Procedure Development:

The following guidelines should be used in developing procedures to implement this policy.

1. General Policy

There are no accompanying procedures.

2. Requesting Restrictions of Uses and Disclosures

- a. Clients/patients may request that DHS restrict use and/or disclosure of their PHI for:
 - i. Carrying out treatment, payment, or health care operations; and
 - ii. Disclosure of PHI to a relative or other person who is involved in the client/patient's care.
- b. All requests for restrictions will be made by having the client/patient complete a **DHS 2095**, "Restriction of Use and Disclosure Request Form".
- c. DHS shall act on the client/patient's request no later than **60 days** from receipt of the request. If DHS is unable to act on the request within 60 days, DHS may extend this time limit by up to an additional **30 days**, provided that:
 - i. DHS notifies the client/patient in writing within the time frame required above of the reasons for the delay and the date by which DHS will act on the request; and
 - ii. DHS uses only one such 30-day extension.
- d. DHS is not required to agree to a restriction requested by the client/patient.
 - i. DHS will not agree to restrict uses or disclosures of PHI if the restriction would adversely affect the quality of the client/patient's care or services;
 - ii. DHS cannot agree to a restriction that would limit or prevent DHS from making or obtaining payment for services;

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- iii. DHS will not agree if restrictions are contrary to Federal or State law; and
- iv. DHS will not agree to restrict disclosures made to the Secretary of the United States Department of Health and Human Services (DHHS), Office of Civil Rights, for complaint investigation, compliance review, or enforcement.
- e. DHS staff will document the client/patient's request, and the reasons for granting or denying the request in the client/patient's hard copy or electronic DHS case record file.
 - i. Prior to any use or disclosure of client/patient's PHI, DHS staff must confirm that such use or disclosure has not been granted a restriction by reviewing the client/patient's case file.
- f. If DHS agrees to a client/patient's request for restriction, DHS staff will not use or disclose PHI that violates the restriction.

Exception: If the client/patient needs emergency treatment and the restricted PHI is needed to provide emergency treatment, DHS staff may use or disclose such PHI to the extent needed to provide the emergency treatment. However, once the emergency situation subsides DHS staff shall ask the provider not to re-disclose the PHI.

- g. DHS may terminate its agreement to a restriction if:
 - i. The client/patient agrees to or requests termination of the restriction in writing;
 - ii. The client/patient orally agrees to, or requests termination of the restriction. DHS staff will document the oral agreement or request in the client/patient's DHS case record file; or
 - iii. DHS informs the client/patient in writing that DHS is terminating its agreement to the restriction. PHI created or received while the restriction was in effect shall remain subject to the restriction.
- h. Any documentation regarding any agreed upon restriction, shall be retained for six years from the date of the agreement or when it was last in effect, whichever is later.

3. Requesting Alternative Means or Locations

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- a. The client/patient must specify the preferred alternative means or location of receiving PHI.
- b. Requests for alternative means or alternative locations for PHI may be made orally or in writing.
- c. If a client/patient makes a request orally, DHS will document the request and ask for the client/patient's signature.
- d. If a client/patient makes a request by telephone or electronically, DHS staff will document the request and verify the identity of the requestor.
- e. Prior to any PHI being sent to the client/patient, DHS staff must review the file and confirm if the client/patient has requested an alternate location or alternate means of receiving the PHI, and if DHS has granted that request.
- f. DHS may terminate its agreement to an alternative location or method of communication if:
 - i. The client/patient agrees to or requests termination of the alternative location or method of communication in writing or orally. DHS will document the oral agreement or request in the client/patient's DHS case record file.
 - ii. DHS informs the client/patient that DHS is terminating its agreement to the alternative location or method of communication because the alternative location or method of communication is not effective. DHS may terminate its agreement to communicate at the alternate location or by the alternative means if:
 - A. DHS is unable to contact the client/patient at the location or in the manner requested; or
 - B. If the client/patient fails to respond to payment requests if applicable.

4. Requesting Access to PHI

- a. DHS will assure that clients/patients may access their own PHI that DHS uses in whole or part to make decisions about them, subject to certain limitations as outlined below in this section.

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- b. All requests for access will be made by having the client/patient complete a **DHS 2093**, “Access to Records Request Form”. [See (4.) (f.) of this section (below) for required time frames].
- c. DHS may deny clients/patients access to their own PHI if Federal law prohibits the disclosure. Under Federal law, clients/patients have the right to access, inspect, and obtain a copy of their own PHI in DHS files or records **except for**:
 - i. Psychotherapy notes;
 - ii. PHI compiled in anticipation of, or for use in civil, criminal, or administrative proceedings;
 - iii. PHI that is subject to the federal Clinical Labs Improvement Amendments of 1988, or exempt pursuant to 42 CFR 493.3(a)(2);
 - iv. PHI that, in good faith, DHS believes could cause harm to the client/patient, participant or to any other person;
 - v. PHI obtained from someone other than a health care provider under a promise of confidentiality, and access would likely reveal the source of the PHI;
 - vi. Documents protected by attorney work-product privilege; or
 - vii. PHI where release is prohibited by Federal or State laws.
- d. DHS may deny a client/patient access to their PHI, provided that DHS gives the client/patient a right to have the denial reviewed, in the following circumstances:
 - i. A licensed health care professional, designated by the program’s administrator/director has determined, in the exercise of professional judgment, that the PHI requested may endanger the life or physical safety of the client/patient or another person;
 - ii. The protected PHI makes reference to another person (unless such other person is a health care provider), and a licensed health care professional designated by the program’s administrator/director has determined, in the exercise of professional judgment, that the PHI requested may cause substantial harm to such other person; or
 - iii. The request for access is made by the client/patient’s personal/legal representative, and a licensed health care

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professional designated by the program's administrator/director has determined, in the exercise of professional judgment, that allowing the personal/legal representative to access the PHI may cause substantial harm to the client/patient or to another person.

- e. If DHS denies access under section (4.)(d.) of this section (above), the client/patient has the right to have the decision reviewed by a licensed health care professional designated by the program's administrator/director and not directly involved in making the original denial decision. DHS will then proceed based on the decision from this review.
 - i. DHS shall promptly refer a request for review to the designated reviewer. [See (4.) (f.) of this section (below) for required time frames].
 - ii. The reviewer must determine, within the time frame required below, whether or not to approve or deny the client/patient's request for access, in accordance with this policy.
 - iii. DHS must then:
 - A. Notify the client/patient in writing within the time frame required below of the reviewer's determination; and
 - B. Take action to carry out the reviewer's determination.
- f. DHS shall act on a client/patient's request for access to PHI no later than **30 days** from receipt of the request.
 - i. In cases where the PHI is not maintained or accessible to DHS on-site, DHS shall act on the client/patient's request no later than **60 days** from receipt of the request.
 - ii. If DHS is unable to act within these 30-day or 60-day limits, DHS may extend this limitation by up to an additional **30 days**, provided that:
 - A. DHS notifies the client/patient in writing within the time frame required above of the reasons for the delay and the date by which DHS will act on the request; and
 - B. DHS uses only one such 30-day extension to act on a request for access.

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- g. If DHS grants the client/patient's request, in whole or in part, DHS must inform the client/patient of the access decision and provide the requested access.
 - i. If DHS maintains the same PHI in more than one format (such as electronically and in a hard-copy file) or at more than one location, DHS need only provide the requested PHI once.
 - ii. DHS must provide the requested PHI in a form or format requested by the client/patient, if readily producible in that form or format. If not readily producible, DHS will provide the PHI in a readable hard-copy format or such other format as agreed to by DHS and the client/patient.
 - iii. If DHS does not maintain, in whole or in part, the requested PHI, and knows where the PHI is maintained, DHS will inform the client/patient of where to request access.
 - iv. DHS may provide the client/patient with a summary of the requested PHI, in lieu of providing access, or may provide an explanation of the PHI if access had been provided, if:
 - C. The client/patient agrees in advance; and
 - D. The client/patient agrees in advance to any fees DHS may impose as outlined in section (vi.) below.
 - v. DHS must arrange with the client/patient for providing the requested access in a time and place convenient for the client/patient and DHS. This may include mailing the PHI to the client/patient if the client/patient so requests or agrees.
 - vi. Fees: If the client/patient requests a copy of the requested PHI, or a written summary or explanation, DHS may impose a reasonable, cost-based fee, limited to covering the following:
 - A. Copying the requested PHI, including the costs of supplies and the labor of copying;
 - B. Postage, when the client/patient has requested or agreed to having the PHI mailed; and
 - C. Preparing an explanation or summary of the requested PHI, if agreed to in advance by the client/patient.
- h. If DHS denies access, in whole or in part, to the requested PHI, DHS must:

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- i. Give the client/patient access to any other requested client/patient PHI, after excluding the PHI to which access is denied;
- ii. Provide the client/patient with a written denial within the time frame required. The denial must:
 - A. Be sent or provided within the time frame in (4.)(f.) of this section (above);
 - B. Include the name or title and phone number of the contact person or office;
 - C. State the basis for the denial, in plain language;
 - D. If the reason for the denial is due to danger to the client/patient or another, explain the client/patient's review rights as specified in (4.)(e.) section (above), including an explanation of how the client/patient may exercise these rights; and
 - E. Provide a description of how the client/patient may file a complaint with DHS or with Region VIII Office of Civil Rights, U. S. Department of Health and Human Services, pursuant to section (7.) of this procedure (below).
- iii. If DHS does not maintain the requested PHI, and knows where such PHI is maintained (such as by a medical provider, insurer, other public agency, private business, or other non-DHS entity), DHS shall inform the client/patient of where to direct the request for access.
- i. DHS must document which designated record sets are subject to access by the client/patient and the title of the person or office responsible for receiving and processing requests by the client/patient.
 - i. Any documentation regarding approval, denial, or PHI accessed, shall be retained for six years from the date of its creation or the date when it last was in effect, whichever is later.

5. Requesting Amendments of PHI

- a. All requests for amendments will be made by having the client/patient complete a **DHS 2094**, "Amendment of Health Record Request Form".

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- b. DHS will honor requests for alternative methods of making this request if reasonable accommodations are needed.
- c. DHS shall act on the client/patient's request no later than **60 days** from receipt of the request. If DHS is unable to act on the request within 60 days, DHS may extend this time limit by up to an additional **30 days**, provided that:
 - i. DHS notifies the client/patient in writing within the time frame required above of the reasons for the delay and the date by which DHS will act on the request; and
 - ii. DHS uses only one such 30-day extension.
- d. If DHS grants the request, in whole or in part, DHS must:
 - i. Make the appropriate amendment to the PHI or records, and document the amendment in the client/patient's file or record;
 - ii. Provide notice to the client/patient in writing within the time frame required above that the amendment has been accepted;
 - iii. Seek the client/patient's agreement to notify other relevant persons or entities of the amendment, with whom DHS has shared or needs to share the amended PHI; and
 - iv. Make reasonable efforts to inform, and to provide the amendment within a reasonable time to:
 - A. Persons named by the client/patient as having received their PHI and who thus need the amendment; and
 - B. Persons, including business associates of DHS, that DHS knows have the PHI that is the subject of the amendment and that may have relied, or could foreseeably rely, on the PHI to the client/patient's detriment.
 - v. Prior to any decision to amend a health or medical record, the request and any related documentation shall be reviewed by the program's administrator/director or designee.
 - vi. Prior to any decision to amend any other PHI that is not a health or medical record, a DHS staff person designated by the program administrator/director shall review the request and any related documentation.
- e. DHS may deny the client/patient's request for amendment if:

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- i. DHS determines the PHI or record to be accurate and complete;
 - ii. The PHI or record was not created by DHS, unless the client/patient provides a reasonable basis to believe that the originator of such PHI is no longer available to act on the requested amendment;
 - iii. The PHI is not part of DHS records; or
 - iv. If it would not be available for inspection or access by the client/patient, pursuant to section (4.)(c.) of this procedure (above).
- f. If DHS denies the requested amendment, in whole or in part, DHS shall:
- i. Provide the client/patient with a written denial within the time frame required. The denial must:
 - A. Be sent or provided within the time frame required in (5.)(c.) of this section (above);
 - B. State the basis for the denial, in plain language;
 - C. Explain the client/patient's right to submit a written statement disagreeing with the denial and how to file such a statement. If the client/patient does so:
 - I. DHS will enter the written statement into the client/patient's DHS case file;
 - II. DHS may also enter a DHS written rebuttal of the client/patient's written statement into the client/patient's DHS case record. DHS will send or provide a copy of any such written rebuttal to the client/patient;
 - III. DHS will include a copy of that statement, or an accurate summary of such information, and of the written rebuttal by DHS if any, with any future disclosures of the relevant PHI;
 - IV. Explain that if the client/patient does not submit a written statement of disagreement, the client/patient may ask that if DHS makes any future disclosures of the relevant PHI, DHS will also include a copy of the

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client/patient's original request for amendment, or an accurate summary, and a copy of the DHS written denial; and

- V. Provide information on how the client/patient may file a complaint with DHS, or with the Region VIII Office of Civil Rights, U.S. Department of Health and Human Services (DHHS), pursuant to section (7.) of this procedure, below.
- g. DHS must document the title of the person or office responsible for receiving and processing requests for amendments by the client/patient.
 - i. Any documentation regarding approval, denial, or amended PHI, shall be retained for six years from the date of its creation or the date when it last was in effect, whichever is later.

6. Requesting an Accounting of Disclosures

- a. When a client/patient requests an accounting of disclosures that DHS has made of their PHI, DHS must provide the client/patient with a written accounting of such disclosures made during the six-year period (or lesser time period if specified by the requesting client/patient) preceding the date of the client/patient's request, unless an exception applies. [See (d.) of this section below].
- b. All requests for an accounting of disclosures will be made by having the client/patient complete a **DHS 2096**, "Accounting of Disclosures Request Form". [See (6.) (g.) of this section (below) for required time frames].
- c. Examples of disclosures of PHI that are required to be listed in an accounting (assuming that the disclosure is permitted by other confidentiality laws applicable to the individual's PHI and the purpose for which it was collected or maintained) include:
 - i. Abuse Report: PHI about an individual provided by DHS staff pursuant to mandatory abuse reporting laws to an entity authorized by law to receive the abuse report.
 - ii. Audit Review: PHI provided by DHS staff from an individual's record in relation to an audit or review (whether financial or quality of care or other audit or review) of a provider or contractor.

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- iii. Health and Safety: PHI about an individual provided by DHS staff to avert a serious threat to health or safety of a person.
- iv. Licensee/Provider: PHI provided by DHS from an individual's records in relation to licensing or regulation or certification of a provider or licensee or entity involved in the care or services of the individual.
- v. Legal Proceeding: PHI about an individual that is ordered to be disclosed pursuant to a court order in a court case or other legal proceeding – include a copy of the court order with the accounting.
- vi. Law Enforcement Official/Court Order: PHI about an individual provided to a law enforcement official pursuant to a court order – include a copy of the court order with the accounting.
- vii. Law Enforcement Official/Deceased: PHI provided to law enforcement officials or medical examiner about a person who has died for the purpose of identifying the deceased person, determining cause of death, or as otherwise authorized by law.
- viii. Law Enforcement Official/Warrant: PHI provided to law enforcement in relation to a fleeing felon or for whom a warrant for their arrest has been issued and the law enforcement official has made proper request for the PHI, to the extent otherwise permitted by law.
- ix. Media: PHI provided to the media (TV, newspaper, etc.) that is not within the scope of an authorization by the individual.
- x. Public Health Official: PHI about an individual provided by DHS staff to a public health official, such as the reporting of disease, injury, or the conduct of a public health study or investigation.
- xi. Public Record: PHI about an individual that is disclosed pursuant to a Public Record request without the individual's authorization.
- xii. Research: PHI about an individual provided by DHS staff for purposes of research conducted without authorization, using a waiver of authorization approved by an IRB – a copy of the research protocol should be kept with the accounting, along with the other PHI required under the HIPAA privacy rule, 45 CFR § 164.528(b)(4).

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- d. Disclosures that are not required to be tracked and accounted for are those that are:
 - i. Authorized by the client/patient;
 - ii. Made prior to the original effective date of this policy, which is April 14, 2003;
 - iii. Made to carry out treatment, payment, or health care operations;
 - iv. Made to the client/patient;
 - v. Made to persons involved in the client/patient's health care;
 - vi. Made as part of a limited data set in accordance with the **DHS Policy DHS-100-07**, "De-identification of Client/Patient PHI and Use of Limited Data Sets";
 - vii. For national security or intelligence purposes; or
 - viii. Made to correctional institutions or law enforcement officials having lawful custody of an inmate.
- e. The accounting must include, for each disclosure:
 - i. The date of the disclosure;
 - ii. The name, and address if known, of the person or entity who received the disclosed PHI;
 - iii. A brief description of the PHI disclosed; and
 - iv. A brief statement of the purpose of the disclosure that reasonably informs the client/patient of the basis for the disclosure, or, in lieu of such statement, a copy of the client/patient's written request for a disclosure, if any.
- f. If, during the time period covered by the accounting, DHS has made multiple disclosures to the same person or entity for the same purpose, or as a result of a single written authorization by the client/patient; DHS may provide:
 - i. Although DHS must provide a written accounting for disclosures made over a six year period, only the first disclosure made during the time period is necessary (DHS need not list the same

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identical PHI for each subsequent disclosure to the same person or entity) if DHS adds;

- ii. The frequency or number of disclosures made to the same person or entity; and
 - iii. The last date of the disclosure made during the requested time period.
- g. DHS shall act on the client/patient's request for an accounting no later than **60 days** from receipt of the request. If DHS is unable to act on the request within the 60 days, DHS may extend this time limit by up to an additional **30 days**, provided that:
- i. DHS notifies the client/patient in writing within the time frame required above of the reasons for the delay, and inform the client/patient of the date by which DHS will provide the accounting; and
 - ii. DHS uses only one such 30-day extension.
- h. Fees: DHS may charge the client/patient a reasonable cost-based fee for each additional accounting requested by the client/patient within the 12-month period following the first request, provided that DHS:
- i. Informs the client/patient of the fee before proceeding with any such additional request; and
 - ii. Allows the client/patient an opportunity to withdraw or modify the request in order to avoid or reduce the fee.
 - iii. DHS must document, and retain in the client/patient's DHS case record file, the PHI required to be included in an accounting of disclosures, as listed in (6.)(c.) of this section (above), and send a copy of the written accounting provided to the client/patient.
- i. DHS will temporarily suspend a client/patient's right to receive an accounting of disclosures that DHS has made to a health oversight agency or to a law enforcement official, for a length of time specified by such agency or official, if:
- i. The agency or official provides a written statement to DHS that such an accounting would be reasonably likely to impede their activities.

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- ii. However, if such agency or official makes an **oral** request, DHS will:
 - A. Document the oral request, including the identity of the agency or official making the request;
 - B. Temporarily suspend the client/patient's right to an accounting of disclosures pursuant to the request; and
 - C. Limit the temporary suspension to no longer than **30 days** from the date of the oral request, unless the agency or official submits a written request specifying a longer time period.
- j. DHS must document the following accounting information:
 - i. Information required to be included in an accounting and subject to an accounting under this section shall be documented in **DHS 2097 Disclosures of Protected Health Information (PHI)**;
 - ii. Any written accounting provided to the client/patient; and
 - iii. The title of the person or office responsible for receiving and processing requests for an accounting by the client/patient.
- k. Any documentation regarding approval, suspension, accountings of PHI, shall be retained for six years from the date of its creation or the date when it last was in effect, whichever is later.

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7. Filing a Complaint

- a. Clients/patients may file complaints with DHS, or with the Region VIII Office of Civil Rights, U.S. Department of Health and Human Services (DHHS). DHS must give clients/patients the specific person or office and address of where to submit complaints:

For Central and Field Offices

Department of Human Services

HIPAA Privacy Office
Hillsview Plaza, East Hwy 34
C/o 500 East Capitol
Pierre, South Dakota 57501-5070
Phone: 1-800-265-9684
Fax: (605) 773-5483 Email: infodhs@state.sd.us

For the Human Services Center

Human Services Center

HIPAA Privacy Contact
PO Box 7600
Yankton, South Dakota 57078-7600
Phone: (605) 668-3100
TTY: (605) 668-3158
Fax: (605) 668-3460 Email: infohsc@state.sd.us

For South Dakota Developmental Center

South Dakota Developmental Center

HIPAA Privacy Contact
17267 3rd St. W
Redfield, South Dakota 57469-1001
Phone: (605) 472-2400
Fax: (605) 472-4216 Email: infosddc@dhs-rf.state.sd.us

* Or *

Region VIII, Office of Civil Rights U. S. Department of Health and Human Services

1961 Stout Street – Room 1185 FOB
Denver, CO 80294-3538
Voice Phone: (303) 844-2024
Fax: (303) 844-2025
TDD: (303) 844-3439

- b. DHS will not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against any person filing a complaint or inquiring about how to file a complaint.

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- c. DHS may not require clients/patients to waive their rights to file a complaint as a condition of providing treatment, payment, or enrollment in a health plan, or eligibility for benefits.
- d. DHS will designate staff to review and determine action on complaints filed with DHS. These designated staff will also perform these functions when DHS is contacted about complaints filed with the Region VIII Office of Civil Rights, U.S. Department of Health and Human Services.
- e. DHS will document, in the client/patient's DHS case file or record, all complaints, the findings from reviewing each complaint, and DHS actions resulting from the complaint. This documentation shall include a description of corrective actions that DHS has taken, if any are necessary, or of why corrective actions are not needed, for each specific complaint.

Form(s):

- “Notice of Privacy Practices”
- **DHS 2093**, “Access to Records Request Form”
- **DHS 2094**, “Amendment of Health Record Request Form”
- **DHS 2095**, “Restriction of Use and Disclosures Request Form”
- **DHS 2096**, “Accounting of Disclosures Request Form”

Reference(s):

- 45 CFR Part 164.522 – 164.528

Contact(s):

- For Central Office Staff and Field Office Staff - DHS HIPAA Privacy Office, (605) 773-5990
- For Human Services Center Staff – DHS HIPAA Privacy Contact, (605) 668-3100
- For South Dakota Developmental Center Staff – DHS HIPAA Privacy Contact, (605) 472-2400